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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
ANTHONY JONES)	OEA Matter No. 1601-0084-08
Employee)	
)	Date of Issuance: June 15, 2009
v.)	
)	Lois Hochhauser, Esq.
D.C. DEPARTMENT OF TRANSPORTATION)	Administrative Judge
Agency)	

Clifford Lowery, Employee Representative
Melissa Williams, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Anthony Jones, (“Employee” herein), filed a petition with the Office of Employee Appeals (OEA) on May 27, 2008, appealing the final decision of the D.C. Department of Transportation, (“Agency” herein) to remove him from his position as Street Sign Installer (Motor Vehicle Operator), effective May 23, 2008. At the time of the adverse action, Employee was in permanent career status.

This matter was assigned to me on September 2, 2008. Following the prehearing conference on November 19, 2008, the parties participated in OEA’s mediation program. The parties submitted periodic status reports, as directed. In January 2009, I was advised that mediation had not been successful. On January 12, 2009, I issued an Order scheduling the evidentiary hearing which took place on February 19, 2009. At the proceeding, the parties had full opportunity to, and did in fact, present testimonial and documentary evidence as well as argument to support their positions in this matter.¹ Melissa Williams, Esq., represented Agency; and Clifford Lowery, American Federation of Government Employees (AFGE), Local 1975, represented Employee. Written closing arguments were filed on May 6, 2009, and the record closed on that date.

¹ Testimony was presented under oath. The transcript is cited as “Tr”, followed by the page number. Exhibits submitted jointly are cited as “J”; those submitted by Agency are cited as “A” ; and those submitted by Employee are cited as “E”; followed by the exhibit number.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code §1-606.3 (2001).

ISSUE

Did Agency meet its burden of proof in this matter?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Employee had worked as a Street Sign Installer for more than five years at the time of his removal. In that position, Employee was responsible for repairing, installing and removing street signs. This includes: installing snow emergency routes throughout the city; replacing damaged or dislocated signs in school zones, cross walks and stop signs; and installing temporary stop signs at crucial intersections during power outages caused by storms or accidents. (Ex E-1).

Agency charged Employee with “Discourteous treatment of the public, supervisor, or other employee: Use of insulting or threatening language to official superior”. In the Advanced Written Notice of Proposed Removal, issued on November 20, 2007, Agency alleged Employee engaged in the follow misconduct:

On Thursday, October 18, 2007, your supervisor, Ms. Michelle Rucker, informed the entire staff that she would be conducting mid-year performance evaluations. During your scheduled time with Ms. Rucker, she told you that you received a mid-year rating of Satisfactory. Ms. Rucker handed you a copy of the mid-year performance evaluation. Ms. Rucker began to explain the areas where you performed well and the areas that you needed to improve. When you heard the overall rating of Satisfactory, you threw the document onto Ms. Rucker’s desk, articulated in a loud and irate manner how dissatisfied you were with the overall rating and then you abruptly stormed out of Ms. Rucker’s office. Your behavior was rude and very unprofessional.

On October 19, 2007, Ms. Rucker and her supervisor, Ms. Stacy Collins, met with the Union Shop Steward, Mr. Dion James, to discuss your behavior with him. The meeting was conducted in an effort to seek help with your habitual irate behavior with your supervisor, Ms. Michelle Rucker. In addition, you were previously suspended for fourteen days (14) for a verbal altercation with a coworker. Mr. James assured both Ms. Rucker and Ms. Collins that he would speak with you about your behavior. Shortly thereafter, Mr. James requested a meeting with Ms. Rucker to discuss the matter. During the meeting, you interrupted Mr. James and became loud and irate. You proceeded to get up out of your seat and you walked towards Ms. Rucker in a very threatening manner. Mr. James made repeated requests for you to sit down but you repeatedly refused his requests. Your behavior was uncontrollable. Again, you again abruptly left a meeting and turned around and mouthed the following expletive, “I’m going to

get you b....” Ms. Rucker quickly repeated your threat to Mr. James, as his back was to you. Mr. James immediately escorted you out of the room in an attempt to settle you down.

As soon as you left the room, Ms. Rucker immediately contacted Ms. Collins for assistance. Ms. Collins secured the assistance of Ms. E. Johnson, Hawk One Security Officer. Soon thereafter, Ms. Collins contacted the Metropolitan Police Department (MPD) for assistance. In addition to contacting MPD, Ms. Collins states that she contacted the Program Manager, Thomas Jackson, to inform him of what had occurred. You were still acting in an irrational way when Mr. Jackson talked to you. Due to your behavior, Mr. Jackson placed you on Administrative Leave. Instead of immediately leaving the premises, you went into the employees’ locker room with Mr. Dion James, the Union Shop Steward. When the officers from MPD arrived on the scene, you were still in the employees’ locker room and you were on the telephone. When you saw the police officers, you immediately began to act in an irrational manner. You started getting loud and boisterous. The police officers, along with Mr. Jackson, had to calm you down yet again. Your behavior disrupted the work site and took away valuable time that needed the attention of the employees (sic).

You have shown a lack of self-control and total disrespect for authority. You have repeatedly behaved in an inappropriate manner. Your continued pattern of aggressive behavior and your total disrespect for authority cannot be tolerated. (Ex A-1).

Positions of the Parties and Summary of Evidence

Agency’s position is that Employee exhibited “aggressive and intimidating behavior” both during this incident and one the previous month that had resulted in a ten day suspension.

Kim Walker, Deputy Program Manager and Acting Program Manager for the Field Operations Division and Acting Program at the time of the alleged misconduct, was in Employee’s chain-of-command. She said she had counseled Employee about “his conflicts” which she described as overreactions resulting from a “communication gap” or “misunderstandings”. (Tr, 13). She testified that Employee reacted to these conflicts by displaying “mannerisms of being irate, irritated, sometimes not having self-control” and raising his voice “to the point where it can be threatening or at least it can be perceived as being threatening”. She said several of Employee’s coworkers were unwilling to work with Employee because “he was not cooperative and had a tendency to talk down to them and at times threatened them”. She stated that Employee’s supervisors, including Ms. Rucker, told her that Employee was “not able to follow directives”. (Tr, 14).

Ms. Walker testified that Employee was upset with the feedback he received from Ms. Rucker on October 18th and walked out of the room. When Employee, Mr. James and Ms. Rucker met the next day, according to the witness, while Ms. Rucker and Mr. James were speaking:

Mr. Jones made a comment, interrupted them indicating that he wasn't happy with the performance rating and I guess he was demonstrating how he gave the form back to Ms. Rucker at the time.

I guess the emotions were raised and there was some shouting and Mr. Jones left based on Mr. James's recommendation. (Tr, 18).

According to the witness, Ms. Rucker felt threatened and called Ms. Collins for assistance. Ms. Collins called the security guard and asked the security guard to contact MPD. Ms. Walker said since she was not present, Mr. Jackson who was serving as Acting Program Manager at the time, was notified. He found both Ms. Rucker and Employee to be "emotional" and "basically told them to take administrative leave...for the day to calm themselves". (Tr, 19). She said that Employee's behavior was unacceptable, noting that she had previously counseled him after the "confrontation" with another employee that had resulted in his suspension. At that time, Ms. Rucker had interceded and "instructed [Employee] to back off". When he had not followed her instructions, another employee "came in and tried to settle things". Ms. Walker stated that Employee became irate and "took it upon himself to leave". Both he and the other employee were suspended. (Tr, 21).

Ms. Walker stated that Agency did not offer Employee its counseling service known by the acronym "COPE". She testified she was not aware of any admonitions or official reprimands that had been issued to Employee. She said that although he always performed his duties well, he had the tendency to be "a hot head and blow some issues out of proportion". (Tr, 23). Ms. Walker testified that Employee's coworkers told her that they could not work with him. (Tr, 24). She agreed that she had not expressed those concerns in her first rating of him, written within six months of her arrival in March 2007, writing instead that he "expresses ideas freely in appropriate situations and is respectful to his colleagues and employees on various levels." (Ex E-1).

Michelle Rucker, Sign Installation Foreman and Employee's supervisor, described Employee as "a good employee [who] went out and did his job". (T, 30). But, she testified, he had a "behavior problem" dealing with coworkers and only one coworker, Mr. Barry, agreed to work with him (Tr, 31). She said she counseled him three or four times to stay calm and "let others do what they have to do". (Tr, 31-32). She testified that Employee's behavior did not disrupt the work place, but that it caused others not to work with him. (Tr, 33).

The witness testified that the incident on October 18 began when Employee disagreed with the "Satisfactory" rating she had given him, arguing that he should have an "Excellent". She said after she explained to him that he had been suspended and did not get along with his coworkers, he got upset. She said the next morning Mr. James told her that Employee wanted to meet with her. She said that while she and Mr. James were talking, Employee stood up and "reached over and was telling [her she] was lying". She said she then called security. (Tr, 37). She said that she did not feel threatened but did not want matters to escalate. She said she knew that Mr. James was representing Employee and she "wanted to make sure [she] was okay". (Tr, 37). She said when Mr. James told Employee to sit back down, Employee complied. (Tr, 38). She said that as Employee was "being

pushed out” of her office with Mr. James, he mumbled and called her a bitch and said he was going to get her but that she did not feel threatened, but rather assumed he was upset. (Tr, 38).

With regard to the incident that led to the suspension, Ms. Rucker said Employee and a coworker had a verbal altercation and Employee was very upset. She said she tried to talk with him but he left work even though she told him he could not leave because he was needed at work. (Tr, 41). Ms. Rucker testified that Employee had no problems with his behavior when he worked with Mr. Barry, but most of the 24 employees she supervised had asked not to work with him. (Tr, 49). She said that all employees are advised of COPE.

Francesco Pacifico, Chief of the Street and Bridge Maintenance Division, testified that he was aware of some incidents between Employee and coworkers, and particularly with Ms. Rucker, during the period Employee worked in his division, i.e., from 2003 until 2007. (Tr, 52). He left in August 2007, but was aware of the incident that led to Employee’s suspension. (Tr, 57).

Dion James, was Employee’s coworker and his Union representative. He testified he spoke with Ms. Rucker on October 18 because she had called Employee into a meeting without Union representation and he felt that [e]very employee has a right to have representation when coming in with management”. He said Ms. Rucker told him Employee was displeased with his evaluation and had thrown the evaluation on her desk. He asked to meet with her and Employee. (Tr, 62, 69). At the meeting on October 19, Employee asked Ms. Rucker why she said he had thrown the papers, and got up to demonstrate what he had done. Mr. James said he asked Employee to sit down because he did not want Ms. Rucker to think he was “some type of threat standing over her”. (Tr, 70). Employee sat back down, but got up and said Ms. Rucker was lying and then rushed out of the room crying and “very emotional”. (Tr, 70).

He said while Employee was trying to show how he had put down the papers, Ms. Rucker kept disagreeing with him and Employee began to cry. He said Ms. Rucker “constantly” asked him if he heard Employee threaten her and call her a name, and he told her he did not. (Tr, 80, 83). He said Ms. Rucker told him that Employee mumbled and called her a bitch, but he did not hear Employee mumble anything or call Ms. Rucker anything and that although he was not facing Employee, he was standing close enough that he would have heard him if he had mumbled. (Tr, 71). He said that the room was quiet enough that he would have heard Employee if he had said anything. (Tr, 93). At that point, Employee starting crying even harder, saying that Ms. Rucker was lying, and left the room (Tr, 79). He said that he stayed with Employee who was in tears, and that MPD arrived at which time Mr. Jackson told Employee he was placing him on administrative leave. (Tr, 74). He said he was with Employee the entire time, and that Employee did not threaten anyone. (Tr, 81).

Stacey Collins, was acting general foreman during the relevant time period and was Ms. Rucker’s supervisor. She said that Ms. Rucker spoke her about several incidents between Employee and coworkers, telling her that nobody wanted to work with Employee because he complained a lot. (Tr, 100). She testified that she had worked with Employee since 2002, first as a colleague and then as his supervisor and recalled one incident when “he jumped up in Mr. Pacifico’s face” and another when he gave a foreman “a hard time”. Both took place in 2005 or 2006.

The witness stated that on the morning of October 19th, she received a telephone call from Ms. Rucker that “Big Bird [was] acting up again”. (Tr, 106). She said everyone called Employee “Big Bird”. She said she passed the Security Officer’s booth and asked Officer Johnson to come with her because she did not know “what [she] was going into”. (Tr, 109). When they arrived at Ms. Rucker’s office, Ms. Rucker was crying and saying she was tired of Employee yelling at her. Ms. Collins then called Mr. Jackson who was acting chief for the day. She said she went into the lounge where Employee was, and although he wasn’t crying, he was “sitting there shaking and kind of rocking” and she knew he was upset. (Tr, 111). She did not witness any discourteous or threatening behavior. She thought that Mr. Jackson called MPD, but she did not see anything that made it appear necessary to call the police. (Tr, 113).

Employee’s position is that he was “never discourteous”, that he “never used insulting behavior” and that he did not threaten his supervisor. (Tr, 9). He said that he had never been issued a letter of counseling, a warning or an admonition regarding his behavior. (Tr, 117). Employee testified that he got along with his coworkers and was never told that they complained about him and did not want to work with him. (Tr, 118). He said he worked with individuals other than Mr. Barry, and at the time he was terminated he had been working with Mr. Boyd for several months. (Tr, 158).

Employee stated that he had always received excellent evaluations. In his previous evaluation issued on April 19, 2007 he had received an overall performance rating of “excellent”, and had received a rating of “excellent” in the areas of quantity, work habits, adaptability and personal relations, which included cooperating with coworkers and dealing with the public. (Ex E-1).

Employee testified that Ms. Rucker approached him on October 18th and told him she needed him to sign his mid-year evaluation. He said he was sitting next to Ms. Rucker when she handed him the evaluation to sign but he would not sign it because he did not think it was true. He said he was dissatisfied with the “satisfactory” rating and that Ms. Rucker did not explain it was because of the suspension. (Tr, 134). He asked her if he could return to work, and she told him he could not because he needed to sign the paper. He said he then placed the paper on her desk and returned to work. He testified that he did not “say anything smart”, threaten her or approach her in a threatening manner. He said he just left. (Tr, 124, 148). He said he returned to work, and worked the rest of the day without incident. (Tr, 150).

Employee stated that he did not know that Ms. Rucker accused him of throwing the paper on her desk until the morning of the 19th. He said while he was outside waiting for his coworker so they could begin work, Mr. James told him that Ms. Rucker was going to “write [him] up for throwing a paper on her desk”. He told Mr. James that he had not thrown anything and asked him to go with him to meet with Ms. Rucker. (Tr, 120). He said at the meeting, when he tried to show Ms. Rucker how he had placed the paper on her desk, she kept saying that he was a liar. He said he got up to leave, and he heard Ms. Rucker ask Mr. James if he had seen him threaten her. Mr. James said he did not. He said he went into the other room and was crying. He said Mr. Jackson came over and asked him if he could work, and he said no. He then called his mother. He said the police came and he left with them. (Tr, 122).

He said that he worked with all his coworkers and that he was not aware of anyone who complained about him or refused to work with him (Tr, 142). He said some people did not like him because he did extra work. He testified that he came to work early and left late, and described himself as someone dedicated to his job:

I come in like 6:00 so I can get my truck ready. I [return] last so my truck can be in the front. I come in last so I can get out so there's ...no arguments...Then when I get my work, I tell my partner...I'm ready, let's roll and we roll out...we go out and do our work...And with me, a lot of people didn't like about me, I do extra work. If you finish your work by 11:00, a lot of people just ride around all day. But if I see a sign or something broke off or a pole broke off and can cause somebody to trip over and ...sue [the government], I'm going to fix it. (Tr, 149).

He explained that the earlier suspension had taken place because after Ms. Rucker told the employees not to touch certain work, Mr. Street went over to it and when Employee told him not to touch it because of what Ms. Rucker had said, Mr. Street started cursing at him and threatening to punch him. Ms. Rucker came over and he told her that he was going to leave because if he stayed he thought there could be a fight. He said it was his day off and he had signed up for overtime (Tr, 128). She said Ms. Rucker told him to bring some work over to her before he left, and he did so. (Tr, 129).

Employee testified that his relationship with Ms. Rucker had deteriorated in the past few years. He had been going to Ms. Rucker's house and detailing her car. While there, he said she would try to get him to "snitch" on coworkers but that he would not. He said after he stopped going to her house to do the work, their relationship deteriorated. (Tr, 137). He said things between them got even worse when she refused to let him go to a doctor after he hurt his ankle and he had to "go over her head" to get permission. (Tr, 138).

Employee stated that at 6 feet 8 inches, he was the tallest person on his job. He weighed 325 pounds at the time he was removed. When he started with Agency he weighed 500 pounds. (Tr, 163).

Analysis, Findings of Fact, and Conclusions

D.C. Official Code § 1-616.51 (2001) (Code herein) provides that the Mayor "issue rules and regulations to establish a disciplinary system that includes...1) a provision that disciplinary actions may be taken for cause... [and]... 2) A definition of the causes for which a disciplinary action may be taken" for those employees of agencies for whom the Mayor is the personnel authority. Agency is under the Mayor's personnel authority.

Agency is required to prove its case by a preponderance of evidence. Preponderance is defined as "that degree of relevant evidence which the reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue". OEA

Rule 629.1, 46 D.C. Reg. 9317 (1999). Agency has the burden of presenting enough evidence to convince the factfinder that a disputed fact was more likely to be true than untrue. In this matter, the disputed facts related to the allegations that formed the bases for the decision to remove Employee. After carefully considering the record in this matter, the Administrative Judge concludes that Agency did not meet its burden.

The discourteous treatment, according to the Notice of Proposed Removal, consisted of throwing the evaluation on Ms. Rucker's desk, mouthing curses and threats to Ms. Rucker, and not leaving the building when he was placed on administrative leave.

There were two people present at the October 18th meeting: Ms. Rucker and Employee. Each presented a different version of how the paper landed on the desk. There were three people present at the October 19th meeting: Mr. James, Ms. Rucker and Employee. There are two versions of what took place at that meeting. Thus, credibility determinations had to be made. In trying to resolve issues of credibility, the Administrative Judge considered the demeanor and character of the witness, the inherent improbability of the witness's version, inconsistent statements of the witness and the witness's opportunity and capacity to observe the event or act at issue. *Hillen v. Department of the Army*, 35 M.S.P.R. 453 (1987). Because of the conflicting testimony, the Administrative Judge adhered to these considerations carefully, particularly reflecting on the demeanor of the witness during the testimony since the substance of the testimony could be reviewed when the transcript was reviewed but the demeanor could not be captured in a transcript. *See, e.g., Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 496 (1951). The District of Columbia Court of Appeals emphasized the importance of credibility evaluations by the individual who sees the witness "first hand". *Stevens Chevrolet Inc. v. Commission on Human Rights*, 498 A.2d at 440-450 (D.C. 1985). The Administrative Judge was also mindful that even if some parts of a witness's testimony are discredited, other parts can be accepted as true. *DeSarno, et al., v. Department of Commerce*, 761 F.2d 657, 661 (Fed. Cir.1985). The Administrative Judge found Mr. James to be a very credible witness. He testified in a forthright and factual manner. He did not have the interest or emotional investment that Ms. Rucker and Employee had in the events, and he was called as an Agency witness. The Administrative Judge found that Mr. James's presentation of the events on the 19th was consistent with Employee's but differed significantly from Agency's description of the events. The Administrative Judge found Employee to be a credible witness. While the Administrative Judge did not find Agency witnesses to be dishonest, their testimony was inconsistent with the allegations in the proposed notice. In addition, the statement of the MPD officer called to the scene by Agency did not support Agency's allegations that Employee was "uncontrollable", "irrational", "boisterous" or that he had threatened anyone. The Administrative Judge found the jointly submitted statement of Officer Desiree Walker, one of the officers who responded on October 19, 2007, to be credible and supportive of Employee's position. She stated:

Once on scene, we were advised that an employee and his supervisor had a disagreement. When we spoke with the employee...he advised that he felt he was being harassed by his supervisor. [Employee] did not display any aggression to the officers on the scene nor anyone else. His demeanor was emotionally upset to the point of tears when we first arrived but he calmed down after we spoke with him. No

one on scene advised he threatened them in any manner. Mr. Jones left the property without incident after he was advised he was being placed on administrative leave. (Ex J-4).

Based on a careful review of the record in this matter, the Administrative Judge concludes that Agency did not meet its burden of proof with regard to the allegations regarding October 18th, i.e., that Employee threw the evaluation on Ms. Rucker's desk or that his behavior was loud and irate. The record is undisputed that Employee left the meeting and returned to work unaware that there was a problem. He was, in fact, surprised when Mr. James informed him of Ms. Rucker's accusation that he had thrown the evaluation on the desk.

The Administrative Judge further concludes that Agency did not meet its burden of proof to support the allegations in the proposed notice regarding Employee's behavior on October 19th. The evidence does not support the statement in the proposed notice that Mr. James agreed to talk with Employee about his behavior. Mr. James stated he wanted to attend any meeting between and management. His testimony supported Employee's position that the meeting on the 19th was initiated by Employee, who was upset about Ms. Rucker's accusation. Agency did not meet its burden of proving that at the meeting on October 19th, Employee approached Ms. Rucker in a threatening manner or that his behavior was "uncontrollable". The evidence does not support the statement in the proposed notice that Mr. James gave Employee directives that he ignored. Most important, Agency did not meet its burden of proving that Employee walked toward Ms. Rucker "in a very threatening manner" or that his behavior was "uncontrollable". Agency's allegations were refuted credibly and consistently by Mr. James and Employee. Employee was upset about the accusation and Ms. Rucker's assertions he was lying, but neither Mr. James nor Employee described behavior that was out-of-control or threatening. Further, the Administrative Judge concludes that Agency did not meet its burden of proof to support the conclusion that Employee mouthed the expletive or threat stated in the proposed notice. The Administrative Judge agrees with Dion Black, the hearing officer, that one of the difficulties with the charge is that since Ms. Rucker states words were mumbled "there is a real possibility that [Ms. Rucker] could have misinterpreted [Employee's] action". (Ex J-2). Further, Mr. James stated that he was close enough to Employee and that the room was quiet enough, so that if anything was said, he would have heard it.

Ms. Rucker testified that Employee was being "pushed out" of her office with Mr. James when he mumbled the threat and expletive. However, the evidence does not support that statement. Rather, the evidence supports the conclusion that Employee left the office of his own volition because he was upset about the accusations made against him. The evidence does not support the conclusion that Employee was out of control after he left the office as stated in the proposed notice., other than the fact that he was very upset and crying. It is unclear why the police were called, since even Ms. Rucker testified she did not feel threatened by Employee. But there is no evidence that it was necessary to call the police and certainly no evidence that Employee was "loud and boisterous" with the police. Also, Agency seems to imply that Employee refused to leave when he was placed on administrative leave by Mr. Jackson. However, there was no evidence that Mr. Jackson directed Employee to vacate the building at once. According to Employee, Mr. Jackson first asked him if he wanted to remain at work, and when he said that he did not, he agreed that he should go home.

According to Ms. Walker, Mr. Jackson placed both Employee and Ms. Rucker on administrative leave because both were upset and needed the time to calm down. Neither version supports the allegation that Employee refused to leave after being placed on leave.

In reversing Agency's decision, the Administrative Judge is not concluding that Employee was blameless. It appears from the testimony that Employee may not always respond maturely to adverse situations and his tendency to walk away from a confrontation or exchange that he finds upsetting may successfully deflect a potentially explosive situation as he contends, but may also frustrate his supervisors. It appears that Employee is very emotional and this impacts on his ability to interact calmly with his supervisors and peers. Employee also appears to be a person who takes his job seriously and takes directives very literally, and he is frustrated with some of his coworkers who may not adhere to these standards. And it appears that Employee's coworkers are frustrated with him because of his impatience and emotional reactions to them. The Administrative Judge also took note of the fact of Employee's size, which quite reasonably may cause people, especially those considerably smaller than him, to be wary of him. But she also noted that his nickname at work was "Big Bird". On the children's television program "Sesame Street", Big Bird is a very large but very harmless character. An individual who is threatening and out-of-control would be called "Big Bird" by coworkers and managers.

Based on a careful review of the testimonial and documentary evidence as discussed herein, the Administrative Judge concludes that Agency did not meet its burden of proof in this matter, and that its actions should be reversed.

ORDER

Based on the foregoing, it is hereby

ORDERED:

1. Agency's action removing Employee from service is reversed.
2. Agency is directed to reinstate Employee to his last position of record, issue Employee the back pay to which he is entitled and restore any benefits he lost as a result of its action.
3. Agency is directed to file with this Office, within thirty (30) calendar days from the date on which this decision becomes final, documents that evidence compliance with the terms of this Order.

FOR THE OFFICE:

LOIS HOCHHAUSER, ESQ.
Administrative Judge